



# UNITED STATES PATENT AND TRADEMARK OFFICE

UNITED STATES DEPARTMENT OF COMMERCE  
United States Patent and Trademark Office  
Address: COMMISSIONER FOR PATENTS  
P.O. Box 1450  
Alexandria, Virginia 22313-1450  
www.uspto.gov

APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/802,161	03/08/2001	Christopher Keith	125467	1139
52531 7590 11/28/2007 CHRISTENSEN O'CONNOR JOHNSON KINDNESS PLLC 1420 FIFTH AVENUE SUITE 2800 SEATTLE, WA 98101-2347			EXAMINER GRAHAM, CLEMENT B	
			ART UNIT 3692	PAPER NUMBER
			MAIL DATE 11/28/2007	DELIVERY MODE PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

<b>Office Action Summary</b>	<b>Application No.</b> 09/802,161	<b>Applicant(s)</b> KEITH, CHRISTOPHER	
	<b>Examiner</b> Clement B. Graham	<b>Art Unit</b> 3692	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 04 September 2007.
- 2a) ☐ This action is **FINAL**.                      2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 1-27 and 31-33 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-27 and 31-33 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All    b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- |  |   |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892)   | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)                       | 5) <input type="checkbox"/> Notice of Informal Patent Application                       |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)<br>Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____  |

### **DETAILED ACTION**

1. A request for continued examination under 37 CFR 1.114, including the fee set forth in 37 CFR 1.17(e), was filed in this application after final rejection. Since this application is eligible for continued examination under 37 CFR 1.114, and the fee set forth in 37 CFR 1.17(e) has been timely paid, the finality of the previous Office action has been withdrawn pursuant to 37 CFR 1.114. Applicant's submission filed on 9/04/2007 has been entered.
2. Claims 1-27, remained pending and claims 31-33 has been added

#### **Claim Rejections - 35 USC § 101**

3. 35 U.S.C. 101 reads as follows:

Whoever invents or discovers any new and useful process, machine, manufacture, or composition of matter, or any new and useful improvement thereof, may obtain a patent therefor, subject to the conditions and requirements of this title.

Claims 1, 6, 10, 15, 22, 31, are rejected under 35 U.S.C. 101 because the claimed invention is directed to non-statutory subject matter.

Applicant's claims are directed to an algorithm. Specifically, claim 1 recites "presenting an order", "simultaneously available for execution" "

However these steps are mere ideas in the abstract (i.e., abstract idea, law of nature, natural phenomena) that do not apply, involve, for example) and abstract ideas without a practical application are found to be non-statutory subject matter. Therefore, Applicant's claims are non-statutory as they do not produce a useful, concrete and tangible result.

#### **Claim Rejections - 35 USC § 102**

##### **Claim Rejections - 35 USC § 102**

4. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

5. Claims 1-27, 31-33, are rejected under 35 U.S.C. 102(b) as being anticipated by Lupien et al(Hereinafter Lupien U.S Patent 5, 101, 353).

As per claim 1, Lupien discloses a method of operating at least two markets on a platform comprising a computer system, the method comprising:  
automatically, using at least one computer, representing an order for an item simultaneously in a first market and a second market, wherein the first and second markets are operating independently of each other on the computer system and the order is simultaneously available for execution in both the first and second markets to complete a trade for the item in the order, automatically, using at least one computer, controlling the execution of the order to ensuring ensure the order is executed in at most one of the first and second markets~ and automatically, using at least one computer, reporting the execution of the order and the market in which the order was executed.(Note abstract and see column 2 lines 60-67 and column 3 lines 1-14 and column 5 lines 63-67 and column 6 lines 1-67 and column 7-22 lines 1-67and column 17 lines 63-67and column 18 lines 1-49).

As per claim 2, Lupien discloses wherein each of the first and second markets operates according to a two phase action protocol, and the automatically controlling the execution of the order includes, in a first phase, obtaining permission to act from a controlling process, and in a second phase, executing the order only if permission is obtained.

(see column 2 lines 60-67 and column 3 lines 1-14 and column 5 lines 63-67 and column 6 lines 1-67 and column 7-22 lines 1-67and column 17 lines 63-67and column 18 lines 1-50).

As per claim 3, Lupien discloses wherein the permission is an affirmation to act upon a specified number of shares of the order. (see column 2 lines 60-67 and column 3 lines 1-14 and column 5 lines 63-67 and column 6 lines 1-67 and column 7-22 lines 1-67and column 17 lines 63-67and column 18 lines 1-65).

As per claim 4, Lupien discloses wherein the controlling process is a trading process. (see column 2 lines 60-67 and column 3 lines 1-14 and column 5 lines 63-67

and column 6 lines 1-67 and column 7-22 lines 1-67 and column 17 lines 63-67 and column 18 lines 1-44).

As per claim 5, Lupien discloses wherein the controlling process is a market process. (see column 2 lines 60-67 and column 3 lines 1-14 and column 5 lines 63-67 and column 6 lines 1-67 and column 7-22 lines 1-67 and column 17 lines 63-67 and column 18 lines 1-48).

As per claim 6, Lupien discloses wherein one of the markets is in fast symbol mode in which all orders posted at the one market are assumed available for immediate execution, and the automatically controlling the execution of the order includes canceling the order from the fast symbol market before executing in the other of the markets. (see column 2 lines 60-67 and column 3 lines 1-14 and column 5 lines 63-67 and column 6 lines 1-67 and column 7-22 lines 1-67 and column 17 lines 63-67).

As per claim 7, Lupien discloses, wherein the automatically controlling the execution of the order includes determining whether the order is in process at another market. (see column 2 lines 60-67 and column 3 lines 1-14 and column 5 lines 63-67 and column 6 lines 1-67 and column 7-22 lines 1-67 and column 17 lines 63-67 and column 18 lines 1-33).

As per claim 8, Lupien discloses wherein the order includes an order tail indicating the markets in which it is represented. (see column 2 lines 60-67 and column 3 lines 1-14 and column 5 lines 63-67 and column 6 lines 1-67 and column 7-22 lines 1-67 and column 17 lines 63-67 and column 18 lines 1-67).

As per claim 9, Lupien discloses wherein a platform process maintains a market file indicating the markets in which an order is represented, and wherein the automatically controlling the execution of the order includes checking the market file ( see column 2 lines 60-67 and column 3 lines 1-14 and column 5 lines 63-67 and column 6 lines 1-67 and column 7-22 lines 1-67 and column 17 lines 63-67 and column 18 lines 1-49).

As per claim 10, Lupien discloses a method of representing an order for an item in at least two markets, comprising:

automatically, using at least one computer, sending the order to at least two markets for simultaneous representation of the order in the at least two markets, wherein the at least two markets operating independently of each other and the order is simultaneously available for execution in the at least two markets to complete a trade for the item in the order, automatically, using at least one computer, controlling the execution of the order to ensuring ensure that executing authority for the order is in a single point~ and automatically, using at least one computer, receiving a report of the execution of the order and the market in which the order was executed. (see column 2 lines 60-67 and column 3 lines 1-14 and column 5 lines 63-67 and column 6 lines 1-67 and column 7-22 lines 1-67and column 17 lines 63-67and column 18 lines 1-49).

As per claim 11, Lupien discloses wherein the single point is a trading process. (see column 2 lines 60-67 and column 3 lines 1-14 and column 5 lines 63-67 and column 6 lines 1-67 and column 7-22 lines 1-67and column 17 lines 63-67and column 18 lines 1-49).

As per claim 12, Lupien discloses wherein the order is associated with information indicating where execution authority for the order resides. (see column 2 lines 60-67 and column 3 lines 1-14 and column 5 lines 63-67 and column 6 lines 1-67 and column 7-22 lines 1-67and column 17 lines 63-67and column 18 lines 1-49).

As per claim 13, Lupien discloses wherein the associated information indicates whether any market at which the order is represented is in process, and the single point is the in process market. (see column 2 lines 60-67 and column 3 lines 1-14 and column 5 lines 63-67 and column 6 lines 1-67 and column 7-22 lines 1-67and column 17 lines 63-67and column 18 lines 1-49).

As per claim 14, Lupien discloses wherein the associated information is used to determine whether a process can declare itself to be the single point. (see column 2 lines 60-67 and column 3 lines 1-14 and column 5 lines 63-67 and column 6 lines 1-67 and column 7-22 lines 1-67and column 17 lines 63-67and column 18 lines 1-49).

As per claim 15, Lupien discloses a method in which an order is simultaneously represented in at least two markets, comprising:

automatically, using at least one computer, receiving an inquiry from one of the at least two markets to confirm the availability of the order for execution in the one market, wherein the at least two markets are operating independently of each other and the order is simultaneously available for execution in the at least two markets, automatically, using at least one computer, affirming availability of a specified number of shares of the order to the one market, and automatically, using at least one computer, receiving a pairing report from the one market for at least one of the affirmed shares. (see column 2 lines 60-67 and column 3 lines 1-14 and column 5 lines 63-67 and column 6 lines 1-67 and column 7-22 lines 1-67 and column 17 lines 63-67 and column 18 lines 1-49).

As per claim 16, Lupien discloses further comprising automatically canceling the paired shares from another of the at least two markets. (see column 2 lines 60-67 and column 3 lines 1-14 and column 5 lines 63-67 and column 6 lines 1-67 and column 7-22 lines 1-67 and column 17 lines 63-67 and column 18 lines 1-49).

As per claim 17, Lupien discloses further comprising placing an instruction to cancel at least one of the paired shares in a queue when the other market indicated that the at least one paired share was in process at the other market. (see column 2 lines 60-67 and column 3 lines 1-14 and column 5 lines 63-67 and column 6 lines 1-67 and column 7-22 lines 1-67 and column 17 lines 63-67 and column 18 lines 1-49).

As per claim 18, Lupien discloses further comprising checking availability of the shares before automatically affirming. (see column 2 lines 60-67 and column 3 lines 1-14 and column 5 lines 63-67 and column 6 lines 1-67 and column 7-22 lines 1-67 and column 17 lines 63-67 and column 18 lines 1-49).

As per claim 19, Lupien discloses wherein the checking availability is based on a number of unpaired shares of the order and a number of in process shares of the order. (see column 2 lines 60-67 and column 3 lines 1-14 and column 5 lines 63-67 and column 6 lines 1-67 and column 7-22 lines 1-67 and column 17 lines 63-67 and column 18 lines 1-49).

As per claim 20, Lupien discloses further comprising marking shares as in process after affirming their availability. (see column 2 lines 60-67 and column 3 lines 1-14 and column 5 lines 63-67 and column 6 lines 1-67 and column 7-22 lines 1-67 and column 17 lines 63-67 and column 18 lines 1-49).

As per claim 21, Lupien discloses wherein the shares are marked as in process for the market to which the shares were affirmed, and further comprising summing the in process shares at all of the markets at which the order is represented to obtain an in process number of shares. (see column 2 lines 60-67 and column 3 lines 1-14 and column 5 lines 63-67 and column 6 lines 1-67 and column 7-22 lines 1-67 and column 17 lines 63-67 and column 18 lines 1-49).

As per claim 22, Lupien discloses a method of executing an order in a market, comprising: automatically, using at least one computer, at a receiving market that operates on a computer system, receiving the order from a source, the order being simultaneously represented in at least two markets that operate independently of each other on the same computer system: the receiving market being one of the at least two markets and the order being simultaneously available for execution in the at least two markets to complete a trade, automatically, using at least one computer, determining whether the receiving market has authority to execute the order, automatically, using at least one computer, executing the order after the receiving market has determined that it has authority to execute the order and canceling the order in the other of the at least two markets, and automatically, using at least one computer, reporting the execution of the order (see column 2 lines 60-67 and column 3 lines 1-14 and column 5 lines 63-67 and column 6 lines 1-67 and column 7-22 lines 1-67 and column 17 lines 63-67 and column 18 lines 1-49).

As per claim 23, Lupien discloses wherein the determining includes affirming availability of the order with the source. (see column 2 lines 60-67 and column 3 lines 1-14 and column 5 lines 63-67 and column 6 lines 1-67 and column 7-22 lines 1-67 and column 17 lines 63-67 and column 18 lines 1-49).



As per claim 24, Lupien discloses wherein the determining includes checking whether another market has authority to execute the order based on information associated with the order. (see column 2 lines 60-67 and column 3 lines 1-14 and column 5 lines 63-67 and column 6 lines 1-67 and column 7-22 lines 1-67 and column 17 lines 63-67 and column 18 lines 1-49).

As per claim 25, Lupien discloses wherein the checking includes examining an order tail. (see column 2 lines 60-67 and column 3 lines 1-14 and column 5 lines 63-67 and column 6 lines 1-67 and column 7-22 lines 1-67 and column 17 lines 63-67 and column 18 lines 1-49).

As per claim 26, Lupien discloses wherein the checking includes examining a central order file. (see column 2 lines 60-67 and column 3 lines 1-14 and column 5 lines 63-67 and column 6 lines 1-67 and column 7-22 lines 1-67 and column 17 lines 63-67 and column 18 lines 1-49).

As per claim 27, Lupien discloses wherein automatically determining includes canceling the order from other markets at which it is represented. (see column 2 lines 60-67 and column 3 lines 1-14 and column 5 lines 63-67 and column 6 lines 1-67 and column 7-22 lines 1-67 and column 17 lines 63-67 and column 18 lines 1-49).

As per claim 31, Lupien discloses a system, comprising: at least one computer having a processing component configured to operate a first market and a second market at which market participants can trade, wherein the processing component is further configured to receive an order from a market participant and simultaneously represent the order in both the first market and the second market, the first and second markets each operating independently of the other on the computer and the order being simultaneously available for execution in both the first and second markets to complete a trade, said processing component being further configured to control the execution of the order to ensure that the order is executed in at most one of the first and second markets. (see column 2 lines 60-67 and column 3 lines 1-14 and column 5 lines 63-67

and column 6 lines 1-67 and column 7-22 lines 1-67 and column 17 lines 63-67 and column 18 lines 1-49).

As per claim 32, Lupien discloses wherein the first or second market that executes the order is an executing market, and wherein the processing component is configured to control the execution of the order by determining, prior to executing the order, whether the executing market has authority to execute the order. (see column 2 lines 60-67 and column 3 lines 1-14 and column 5 lines 63-67 and column 6 lines 1-67 and column 7-22 lines 1-67 and column 17 lines 63-67 and column 18 lines 1-49).

As per claim 33, Lupien discloses wherein the processing component is further configured to cancel the order from the other of the first or second market at which the order is represented before executing the order at the executing market. (see column 2 lines 60-67 and column 3 lines 1-14 and column 5 lines 63-67 and column 6 lines 1-67 and column 7-22 lines 1-67 and column 17 lines 63-67 and column 18 lines 1-49).

### **Conclusion**

### **RESPONSE TO ARGUMENTS**

6. Applicant's arguments filed 9/04/07 has been considered but they are moot in view of new grounds of rejections.
7. Applicant's claims 1, 6, 10, 15, 22, 31 states "**simultaneously available for execution**" However the subject matter of a properly construed claim is defined by the terms that limit its scope. It is this subject matter that must be examined. As a general matter, the grammar and intended meaning of terms used in a claim will dictate whether the language limits the claim scope. Language that suggests or makes optional but does not require steps to be performed or does not limit a claim to a particular structure does not limit the scope of a claim or claim limitation. The following are examples of language that may raise a question as to the limiting effect of the language in a claim:
  - (A) statements of intended use or field of use,
  - (B) "adapted to" or "adapted for" clauses,
  - (C) "wherein" clauses, or
  - (D) "whereby" clauses.

This list of examples is not intended to be exhaustive. See also MPEP § 2111.04.

\*\*>USPTO personnel are to give claims their broadest reasonable interpretation in light of the supporting disclosure. In re Morris, 127 F.3d 1048, 1054-55, 44 USPQ2d 1023, 1027-28 (Fed. Cir. 1997). Limitations appearing in the specification but not recited in the claim should not be read into the claim. E-Pass Techs., Inc. v. 3Com Corp., 343 F.3d 1364, 1369, 67 USPQ2d 1947, 1950 (Fed. Cir. 2003) (claims must be interpreted "in view of the specification" without importing limitations from the specification into the claims unnecessarily). In re Prater, 415 F.2d 1393, 1404-05, 162 USPQ 541, 550-551 (CCPA 1969). See also In re Zletz, 893 F.2d 319, 321-22, 13 USPQ2d 1320, 1322 (Fed. Cir. 1989) ("During patent examination the pending claims must be interpreted as broadly as their terms reasonably allow.... The reason is simply that during patent prosecution when claims can be amended, ambiguities should be recognized, scope and breadth of language explored, and clarification imposed.... An essential purpose of patent examination is to fashion claims that are precise, clear, correct, and unambiguous. Only in this way can uncertainties of claim scope be removed, as much as possible, during the administrative process.").<

Where an explicit definition is provided by the applicant for a term, that definition will control interpretation of the term as it is used in the claim. Toro Co. v. White Consolidated Industries Inc., 199 F.3d 1295, 1301, 53 USPQ2d 1065, 1069 (Fed. Cir. 1999) (meaning of words used in a claim is not construed in a "lexicographic vacuum, but in the context of the specification and drawings."). Any special meaning assigned to a term "must be sufficiently clear in the specification that any departure from common usage would be so understood by a person of experience in the field of the invention." Multiform Desiccants Inc. v. Medzam Ltd., 133 F.3d 1473, 1477, 45 USPQ2d 1429, 1432 (Fed. Cir. 1998). See also MPEP § 2111.01.

8. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Clement B Graham whose telephone number is 571-272-6795. The examiner can normally be reached on 7am to 5pm.

Application/Control Number:  
09/802,161  
Art Unit: 3692

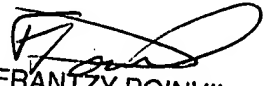
Page 11

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Kambia Abdi can be reached on 571-272-6702. The fax phone numbers for the organization where this application or proceeding is assigned are 571-273-8300 for regular communications and 703-305-0040 for After Final communications.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is 703-305-3900.

CG

Nov 22, 2007

  
FRANTZY POINVIL  
PRIMARY EXAMINER  
Au 3692